



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

March 28, 2008

John E. Dority Safety & Performance Training Center (Conference Room, Lower Level)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 AM

☒ Present: Eckert, Qualey, Jemison, Stevenson and Walton

1. Introductions of Board and Staff

☒ The Board, staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the February 29, 2008, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

☒ Jemison noted a typo near the bottom of the second page.

Jemison/Stevenson: Moved and seconded approval of the minutes with the typo corrected.

In Favor: Unanimous

3. Gowan Company Request for a 24(c) Registration for Use of Nexter Miticide/Insecticide on Greenhouse Tomatoes

Gowan Company is requesting a Special Local Needs [24(c)] Registration to allow for the use of Nexter Miticide/Insecticide (active ingredient pyridaben) on greenhouse tomatoes. Nexter is currently registered for use on several food crops and EPA has established a tolerance on tomatoes of 0.15 ppm. There are current 24(c) labels in effect for greenhouse tomatoes in Texas, Arizona and Pennsylvania. Nexter is the product of choice for Backyard Farms in Madison because it provides effective control of whiteflies and mites with minimal impact on their aggressive

biological pest control program.

Presentation By: Wesley Smith
Pesticides Registrar

Action Needed: Approve/Disapprove 24(c) Registration

- ☒ Smith introduced the 24(c) registration request noting that the application appeared to be complete, and that EPA has already established a tolerance for tomatoes of 0.15 ppm. He alerted Board members that Erika Roderick and Mark Queenan from Backyard Farms were present to respond to questions.

Jemison inquired about whether the development of resistance was a concern. Roderick responded that there are other insecticides registered for use on insects and mites such as abemectin. Jemison next asked about the mode of action for Nexter. Hicks and Eckert agreed the literature showed it was an mitochondria electron transport inhibitor. Jemison noted the extreme variation in the pre-harvest intervals (PHI). No one knew the precise reason for the variability, but the prevailing thinking was that the 200 plus day PHIs were the result of label directions that limited applications to non-bearing crops.

Eckert inquired about the potential for worker exposure. Roderick stated that most spraying is actually done by a robotic sprayer suspended by a rail system. They use products with a 12-hour re-entry interval (REI) and applications are timed to allow the maximum amount of time until workers return. In addition, all treated areas are posted, whether required or not.

Jemison/Qualey: Moved and seconded approval of the 24 (C) registration request.

In Favor: Unanimous

4. Final Adoption of Major Substantive Rule Amendments, Chapter 26 and Chapter 29, Section 6

At its January 25, 2008, meeting, the Board provisionally adopted major substantive amendments to Chapter 26 and Chapter 29, Section 6. The Joint Standing Committee on Agriculture, Conservation and Forestry held a public hearing and workshop on those amendments on February 25, 2008. Subsequently, the Committee voted both amendments out as ought-to-pass without changes. The Legislature enacted both Resolves and the Governor signed them into law on March 17, 2008. The Board will now decide whether to finally adopt the amendments.

Presentation by: Henry Jennings
Director

Action Needed: Final Adoption of Major Substantive Amendments

- ☒ Jennings explained that the legislature had enacted resolves authorizing adoption of the two major substantive rule amendments. The Governor signed both resolves on March 17, 2008. Basis statements for both amendments were revised to add a paragraph detailing how the legislative

review process had been completed. Jennings stated that the Board would need to take separate votes for each amendment, and to adopt both the amendment and the revised basis statement.

Qualey/Jemison: Moved and seconded final adoption of rulemaking amendments to Chapter 26 together with the revised basis statement.

In Favor: Unanimous

Jemison/Qualey: Moved and seconded final adoption of rulemaking amendments to Chapter 29, Section 6, together with the revised basis statement.

In Favor: Unanimous

5. Consideration of Applications From Monsanto Ag Products to Register Yieldgard VT Rootworm/RR2 and Yieldgard VT Triple

During 2007, and after a lengthy review process, the Board approved the registrations of ten Bt field corn products. The staff automatically renewed any 2008 registration requests for the same products or products containing the same genetic events, but agreed to first review any Bt field corn registration requests that involve a different genetic event. Monsanto Ag Products has submitted registration requests for two such products. Staff toxicologist Lebelle Hicks has reviewed the two new products and concluded the risks are comparable to the previously registered products.

Presentation By: Lebelle Hicks
Pesticides Toxicologist

Action Needed: Approve/Disapprove Product Registration Requests

- ☒ Eckert began the discussion by observing that the new products in question were similar to those already approved by the Board. Hicks explained that her review of the proteins showed that EPA considered them essentially identical to the other Bt proteins from a toxicological standpoint. Jemison confirmed that Maine is not one of the areas of the country where a 50% refuge is required.

Walton/Qualey: Moved and seconded approval of the registration requests.

In Favor: Unanimous

Jemison requested clarification about the range of Bt corn products now available in Maine in terms of the number of traits exhibited by the various products. There was also discussion of how the Board would handle an application for Bt sweet corn, and whether a full Medical Advisory Committee review would be necessary. Eckert wondered if the larger number of Bt corn options would lead to greater usage by Maine farmers. Jemison doubted it would make much difference.

6. Continued Discussion About Approaches to Address Public Concerns About Aerial Spraying

The Board held a Public Information Gathering Meeting on aerial spraying and spray drift at its December 2007 meeting, and then discussed issues and ideas at its January and February 2008 meetings. During the February meeting, the Board directed the staff to develop some concepts relating to detailed site plans and identification of sensitive areas. The Board will now review the staff concepts and continue its discussion about aerial spraying and drift.

Presentation By: Henry Jennings
Director

Action Needed Provide feedback to the staff about the concepts presented and determine the next steps

- ☒ Jennings began by reviewing the staff memo. He pointed out that the original drift rule, Chapter 22, established standards for applicators to scout and monitor the areas surrounding an application site, with a view toward planning applications to minimize the off-target impacts. He went on to say that these requirements had been ineffective in the case of aerial agricultural applications. The requirements for documenting sensitive areas are inadequate inasmuch as the type and location of the sensitive areas don't need to be recorded. Moreover, there is evidence that the aerial applicators aren't always getting detailed site information prior to spraying, and that in many cases, information is conveyed just prior to the application with little time for consideration.

Jennings relayed the staff is advocating for more clear and rigorous site planning requirements when aerial applications are conducted near occupied areas. A new section would be added to Chapter 22 specific to aerial application. The proposal is predicated on the establishment of a definition for "sensitive areas likely to be occupied (SALO)". The staff proposes to extend the distance for identifying SALOs to 1000', based on a review of historical incidents. The staff further proposes to upgrade the requirements for providing in-depth site information to the pilot, to include a scaled, detailed, site map depicting the boundaries of the target area, the property boundaries, and the type and location of SALOs within 1000 feet and other sensitive areas within 500 feet. Applicators would need to retain copies of the site maps as part of their application records. The staff suggested that the upgraded site planning requirements might be coupled with a drift management plan requirement for aerial applicators. Mandatory use of Best Management Practices (BMPs) was another option.

There was considerable discussion about the development of site maps and how difficult that may be for land managers. Jemison inquired about the availability of satellite or aerial imagery. David Bell suggested that it is the commercial applicator's responsibility to determine what information is necessary to insure positive site identification and communicate requirements to land managers, and it is the responsibility of the land managers to provide the information requested to commercial applicators. He pointed out that some growers will pre-fly fields with the aerial applicator which should provide adequate review of the site. Board members discussed the idea of a pre-flight and different language for allocating responsibilities.

Discussion also centered around the need to provide detailed site information to the pilot far enough in advance to allow of proper consideration balanced against the recognition that land managers may not know which fields will be sprayed until shortly before the application occurs.

Walton suggested that land managers could provide a complete set of site maps before the growing season and then provide updated information on which sites will be sprayed as the season progresses.

Eckert attempted to summarize areas of Board consensus. She stated there is consensus to move forward with measures to prevent spraying the wrong site, a definition of SALOs and to extend the requirement for identifying them to 1000 feet. There was also consensus to require a site map for aerial spraying – possibly providing for a two tiered system under which land managers provide initial site information before the season and then update the information as the control window approaches. In addition, the type and location of the sensitive areas need to be recorded on the site map. A list will not be acceptable. Responsibility for providing a site map may be split between the land manager and the applicator based on language suggested by Randlett.

Board members expressed interest in entertaining a presentation on the GIS systems used by aerial applicators. Jennings agreed to arrange for a presentation.

7. Adoption of Board Policy Clarifying the Definitions of Spray Contracting Firm

The Board's statutes and rules both contain definitions for "spray contracting firm," with the definition in rule containing slightly more detail. Both definitions can be interpreted broadly to include anyone who enters into a contract to provide a broad range of services including pest control, even if the pest control services are subcontracted. At the February 29, 2008, Board meeting, the staff presented a memo outlining Board options to institute a more logical public policy which would exclude general contractors unless they maintain control of pesticide application decisions. Following discussion at the meeting, the Board directed the staff to draw up a policy and bring it back for consideration at the next meeting. The Board will now review the proposed policy and consider its adoption.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed Review the proposed policy and consider adoption

- ☒ Fish reviewed the reasoning behind the proposed policy, stating the proposal aligns with other areas of professional licensing. When landscape contractors subcontract for pest management, there's no public benefit to requiring a license as long as they don't dictate which pesticides to use and when to use them.

Board members agreed the proposed policy appeared logical.

Jemison/Walton: Moved and seconded adoption of the interim enforcement policy relating to spray contracting firm licensing requirements.

In Favor: Unanimous

8. Discussion of Criteria for Variances to Chapter 29, Section 6

Chapter 29, Section 6, requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near surface waters, including lakes, ponds, rivers, streams, certain wetlands and estuarine/marine waters. This section also contains a mechanism under which the Board or its staff can grant variances. With two requests already received and others expected, the staff is seeking guidance for determining under what circumstances variances should be granted.

Presentation By: Henry Jennings
Director

Action Needed Provide guidance to staff for granting variances to the buffer requirement

- ☒ Jennings reiterated that the staff is looking for guidance on how to address variance requests for the new 25-foot surface water setback. Two golf courses had submitted requests detailing their needs to control pests within the setback. Jennings stated the staff generally views golf course applicators as a fairly well trained and progressive minded group. He suggested that the Board may want to approve the requests for the first year and indicate they should be developing a strategy to reduce pesticide use in the setback for the long term.

Jemison stated he could accept the use of pesticides on greens and tees within the setback, but he had trouble justifying use of pesticides on the fairways and roughs that are close to surface water. Walton stated there was no public health or economic need to use pesticides that close to water. Stevenson and Eckert also questioned the justification. Consensus was reached directing the staff to approve variances that allow for the use of pesticides on greens and tees located within the setback, but not for the fairways and roughs. The staff was further directed to indicate that superintendents are welcome to plead their case in front of the Board if they so desire.

Robert Moosmann from the Maine DOT then briefed the Board about his department's plans for right-of-way spraying in 2008. They will be doing a couple of types of applications that they haven't done in the past, including spraying for weeds along the guardrails and spraying for weeds in pavement cracks. Both of these types of applications may be within the 25-foot setback in some circumstances.

9. Consideration of Staff Negotiated Consent Agreement with TruGreen Chemlawn, Inc., of Westbrook

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the failure to notify an individual listed on the 2007 Pesticide Notification Registry who was within 250 feet of an application.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

10. Consideration of Staff Negotiated Consent Agreement with Purely Organics of York Harbor

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved custom application of pesticides by an unlicensed applicator and for making pesticidal claims for the sale and application of an unregistered vinegar product.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

11. Consideration of Staff Negotiated Consent Agreement with Service Master of Saco

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the custom application of mold remediation products by an unlicensed company.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

12. Consideration of Staff Negotiated Consent Agreement with David Register of Lisbon

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the custom application of bleach to control mold in a rented residential unit by an unlicensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- ☒ Jemison/Walton: Moved and seconded approval of consent agreements with TruGreen Chemlawn, Purely Organics Service Master and David Register.

In Favor: Unanimous

Eckert inquired as to how much organic lawn care takes place. Fish said there are no accepted standards for organic lawn care, so it's somewhat undefined. Eckert suggested it would be beneficial to publicize the licensing/registration requirements for products like bleach and for organic pest control programs.

13. Other Old or New Business

a. Update on Replacement for Lee Humphreys—H. Jennings

- ☒ Jennings stated that several members of the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) had concerns about the nomination of Deborah Aldridge based on misinterpretation of information submitted in conjunction her nomination. Due to the last minute nature of these concerns, the Commissioner decided it would be prudent to temporarily withdraw the nomination so that accurate information can be disseminated and adequate support generated.

Jennings asked whether the Board had an interest in voicing support for Aldridge's nomination. Eckert mentioned Aldridge had shown enough interest to attend Board meetings prior to being confirmed, that she had both organic and conventional farming experience, and that the organic grower perspective had proven useful in the past.

Jemison stated the ACF actions only made it more challenging to recruit quality Board members. He felt Aldridge had the qualities the Board needs. Stevenson stated he did not know Aldridge and he favored basing decisions on the applicant's qualifications. Jennings agreed to consult Stevenson and possibly draft a letter for the Board's signature supporting either Aldridge and/or the organic grower background.

b. Continuing Discussion of Pesticide Use Data—H. Jennings

- ☒ This item was tabled due to time constraints.

c. YardScaping Update—G. Fish

- ☒ Fish updated the Board on the "6 Steps" bookmark being distributed by the Yardscaping Partnership. He also reported that things are starting to happen at the Back Cove demonstration site. Fill has been delivered and excavating is scheduled soon. Planting plans with a plant list have been finalized and will be sent to nurseries for bids. Yardscaping interest/activities have picked up significantly from last year.

d. Other ?

- ☒ Jemison asked the staff to mail out the Bt corn rule and fact sheet to people who attended the Bt corn training sessions, so that they will have all the information about state and federal requirements.

14. Schedule and Location of Future Meetings

May 2, June 13, and July 25, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- ☒ No additional dates were set at the meeting. Eckert suggested that the staff email Board members about possible future meeting dates.

15. Adjourn

- ☒ Walton/Jemison: Moved and seconded that the meeting adjourn at 1:22 p.m.

In Favor: Unanimous